

Statement of

Matthew S. Borman

**Acting Assistant Secretary for Export Administration,
Bureau of Industry and Security,
U.S. Department of Commerce**

before the

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Commerce Committee, United States House of Representatives**

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Mr. Chairman, Representative Radanovich, and Distinguished Members of the Subcommittee:

I appreciate the opportunity to appear before the Subcommittee today to discuss the Bureau of Industry and Security's role in implementing the U.S. trade embargo on Cuba.

Legal Framework

On February 3, 1962, citing the authority granted by the Foreign Assistance Act of 1961, President Kennedy issued Proclamation 3447 declaring a trade embargo against Cuba. Among other actions, this proclamation directed the Secretary of Commerce to continue a prohibition, with certain exceptions, on exports from the United States to Cuba under the Export Control Act of 1949 (superseded by the Export Administration Act of 1979).

Today, the Bureau of Industry and Security (BIS) of the Department of Commerce and the Office of Foreign Assets Control (OFAC) of the Department of the Treasury maintain primary responsibility for implementing the embargo within the framework of a number of statutes and regulations. BIS regulates exports of commodities, software and technology to Cuba through the Export Administration Regulations (EAR). The general statutory basis for the EAR is the Export Administration Act of 1979 (EAA), and, when the EAA is in lapse, the International Emergency Economic Powers Act (IEEPA). OFAC also regulates transactions involving Cuba, including financial transactions related to exports, through the Cuban Assets Control Regulations (CACR), which are primarily authorized by the Trading With the Enemy Act (TWEA).

In addition to the embargo, on March 1, 1982 the Secretary of State designated Cuba as a State Sponsor of International Terrorism pursuant to the Export Administration Act of 1979. This designation resulted in further restriction of the export to Cuba of items controlled for anti-terrorism reasons on the Commerce Control List (CCL).

Congress passed legislation affecting the embargo against Cuba with the Cuban Democracy Act of 1992 (CDA) and the Cuban Liberty and Democratic Solidarity Act of 1996 (frequently referred to as the “Libertad” or “Helms-Burton” Act). In a provision aimed at providing support to the Cuban people, the CDA set forth a number of policies, since implemented in the EAR, to allow for a variety of items to be exported to Cuba. These items include donated food, medicine and medical devices, and telecommunications equipment to ensure adequate and efficient telecommunications service between the United States and Cuba. At the same time, the CDA also imposed some restrictions on certain exports, such as those requiring onsite verification for medical exports and prohibiting the authorization of most exports to Cuba from overseas U.S. subsidiaries.

Libertad codified the embargo against Cuba and requires that the embargo remain in effect subject to a provision related to the suspension or termination of the embargo upon a determination that a transition to democracy is underway, or has taken place, in Cuba. The President does, however, retain discretion to make exceptions to the embargo. As a result, the Commerce Department has the authority to issue a license for a particular export or to issue a general authorization, referred to in the EAR as a license exception, for the export of an identified category of items under stated conditions.

The Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) required the authorization of exports of agricultural commodities to Cuba. Due to requirements in TSRA, however, exporters must still submit notice of proposed sales of eligible commodities for expedited government review to ensure that agricultural exports do not go to any Cuban entities that promote international terrorism.

Pursuant to the aforementioned statutes and regulations, practically all items on the Commerce Control List (CCL) (items subject to multilateral and unilateral controls) and most other items subject to the EAR, but not included on the CCL, require a license for export to Cuba. Most items that require a license are subject to a general policy of denial.

Certain exports, however, may be shipped to Cuba pursuant to a license exception set forth in the EAR. Commercial sales of agricultural commodities occur under a license exception as do gift parcels to individual Cubans and humanitarian donations by U.S. charitable organizations of a wide variety of items intended to meet the basic human needs of the Cuban people

In addition, BIS may issue licenses authorizing the export to Cuba of several categories of items following a case-by-case review by the Departments of Commerce, Defense and State. These categories include medicine and medical devices, telecommunications equipment, and items intended to meet humanitarian needs and to promote democratic change in Cuba. BIS may also issue licenses for certain agricultural items such as fertilizers and pesticides, aircraft and vessels on temporary sojourn to Cuba to deliver humanitarian aid, and items for U.S. news bureaus operating in Cuba.

2008 Authorizations

In 2008, BIS processed 358 export license applications for Cuba. Of those, 235 were approved, 114 returned without action, and 9 denied. The approved licenses were worth approximately \$1.5 billion. BIS also processed 151 Agricultural License Exception Notices. Of those, 143 were approved and 8 returned without action. BIS did not deny any Agricultural License Exception Notices. The approved notices were worth approximately \$3.2 billion.

The response to the 2008 hurricanes illustrates the U.S. Government's commitment to ensure that export controls do not hinder efforts to provide humanitarian aid to the Cuban people. During the last quarter of 2008, BIS authorized licenses for the donation of food, medicine and medical supplies, clothing, household goods, personal hygiene items, and shelter materials valued at over \$95 million. Expedited U.S. Government review of license applications resulted in average processing time of only five days for these licenses.

The value of the licenses is the maximum that could be shipped and usually not the actual value of the goods shipped. Also, these figures do not include the dollar value of exports of humanitarian items exported under license exception, because U.S. charitable organizations are not required to provide notice or to otherwise formally report to BIS. The large number of inquiries received by BIS concerning the relevant license exception suggests extensive use of the license exception, particularly by faith-based organizations in the immediate aftermath of the 2008 hurricanes that struck Cuba.

Pending Revisions

On April 13, the President directed the Secretary of Commerce to further expand the scope of the license exception regarding gift parcels to make a wider variety of items eligible for export and to establish a new license exception authorizing the export of donated personal communications devices. Both license exceptions will permit donations to all Cubans (with the exception of identified Cuban Government and Communist Party officials) and to non-governmental organizations in Cuba. The President directed these measures to increase the independence of the Cuban people and to promote contacts between Americans and their relatives in Cuba and among the Cuban people in support of the Cuban people's desire to freely determine their own future and Cuba's future.

A draft of the regulatory change necessary to implement that directive has already been completed and is undergoing final departmental review. It will shortly be sent to the Office of Management and Budget for review.

Conclusion

The embargo against Cuba is based on a framework of statutes implemented by regulations. The controls implemented by BIS through the EAR are fully consistent with

the relevant laws enacted by the Congress. BIS, working together with our interagency partners, seeks to implement the President's recent directive promptly to meet the basic human needs of the Cuban people and facilitate contacts between Americans and their relatives on the island.

Thank you for your attention to this important topic. I would be pleased to answer any questions you may have concerning BIS's implementation of the embargo.